

APR 16 2001

CC:CT:NO-115591-01
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MEMORANDUM FOR CHIEF, CRIMINAL INVESTIGATION

FROM: *Nancy J. Jardini* / *Barry J. Finkelstein*
Division Counsel/Associate Chief Counsel (Criminal Tax)

SUBJECT: Referral Path of Violations of I.R.C. § 6050I Involving
Forms 8300

There has been confusion regarding the referral path of prosecution recommendations involving violations of I.R.C. § 6050I with respect to Forms 8300 (reports of cash payments over \$10,000 received in a trade or business). As this memorandum clarifies, the referral path of these cases depends on the nature of the particular violation. Generally, violations involving the failure to file Form 8300 or the supplying of false information on Form 8300 (I.R.C. §§ 7203 and 7206, respectively) fall within the scope of the CCDM and Tax Division Directive 87-61, and may be directly referred to the United States Attorney.¹ However, there is an exception to this general rule where the Form 8300 is "wholly fictitious" and is filed without any underlying reported cash transaction. In such cases, violations of I.R.C. § 6050I must be referred through the Tax Division.

¹ The CCDM and Tax Division Directive exclude from direct referral cases involving the following: accountants, physicians, attorneys acting in their professional representative capacity or their employees, casinos or their employees, financial institutions or their employees, local, state, federal or foreign public officials, political candidates, members of the judiciary, religious leaders, representatives of the electronic or printed news media, officials of a labor union, and publicly held corporations, and/or their officers. Such cases must be referred to the Tax Division and not directly to the United States Attorney. CCDM (31)4(14)(5)(f) and Tax Division Directive 87-61.

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ANALYSIS

I.R.C. § 6050I establishes the requirement of businesses to file Form 8300 when they receive \$10,000 or more in cash from one transaction or two or more related transactions. Section 6050I(f) criminalizes the structuring of transactions to evade the reporting requirements. An individual violating I.R.C. § 6050I is subject to the penalties outlined in 26 U.S.C. § 7203² or § 7206.

The CCDM provides instructions pertaining to the referral of cases involving filing Forms 8300 pursuant to violations of 26 U.S.C. § 6050I. "Generally, cases which *solely* involve violations of I.R.C. §§ 7203 and 7206 with respect to returns relating to cash received in a trade or business (Form 8300) as prescribed in I.R.C. § 6050I may be directly referred by Counsel³ to the United States Attorney." CCDM (31)4(14)(5)(f) (emphasis added).

Similarly, Tax Division Directive 87-61 delegates prosecution authority to any United States Attorney for violations of 26 U.S.C. §§ 7203 and 7206 "with respect to returns (IRS Form 8300) prescribed in 26 U.S.C. § 6050I relating to cash received in a trade or business, provided that the prosecution of such tax offenses involves *solely* cash received in a trade or business as required by 26 U.S.C. § 6050I." Department of Justice, Tax Directive No. 87-61, Asst. Att'y Gen., Tax Division, February 27, 1987(emphasis added).

The use of "solely" in both provisions specifically excludes from the direct referral path any case not within the Manual or Directive's language. According to both the CCDM and Tax Division Directive 87-61, only the specific violations outlined in the provisions (standing alone) may be directly referred to the United States Attorney. Thus, a Form 8300 violation that is coupled with a traditional tax charge (i.e., tax evasion or filing a false income tax return) must be referred through the Tax Division, since it does not comply with the "solely" requirement of the Directive. Furthermore, a violation that is not a material misrepresentation on the Form 8300 but rather an unsubstantiated Form 8300 filed for harassment purposes without any factual basis to support an underlying cash transaction does not fall within the scope of the directive. These are deemed "wholly fictitious" Forms 8300, because the Form reports a nonexistent cash

² A violation consisting of willfully failing to file a return, supply information or pay tax under 26 U.S.C. § 7203 in conjunction with § 6050I is a felony subject to five years' imprisonment.

³ Treasury Order 150-35 designates referral authority to Criminal Investigation as of July 10, 2000.

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transaction. Fictitious Forms 8300 are commonly used in schemes involving the use of sight drafts and/or bills of exchange in payment of federal, state and local taxes, as well as non-tax debts. Another aspect of these schemes involves the harassment of IRS employees, federal and state judges and prosecutors, state highway troopers, and private citizens through the filing of fictitious Forms 8300. Over the last few years, several hundred fictitious Forms 8300 have been filed with the Internal Revenue Service.

The following examples further illustrate the difference between the types of I.R.C. § 6050I violations that may be directly referred and those that may not. Example (1): a car dealership receives over \$10,000 in cash for the purchase of a vehicle and agrees to file a false Form 8300 based on information provided by the purchaser, inserting a third party as the owner of the vehicle when in fact the third party is merely a nominee owner and the true owner maintains control over the vehicle. This violation may be directly referred to the United States Attorney, as it involves a material misrepresentation pursuant to 26 U.S.C. § 7206. Example (2): an individual files a Form 8300 as part of a harassment scheme against a government official with no underlying cash transaction. Such a form is deemed fictitious, and is outside the scope of the directive. Therefore, this violation must be referred through the Tax Division.

The rationale for this position is that these wholly fictitious Forms 8300 fall outside the intended scope of the CCDM and Tax Directive 87-61.

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CONCLUSION

Accordingly, the referral path of violations of I.R.C. § 6050I will depend on the underlying facts of each case. To the extent the failure to file or material misstatement is based on an underlying cash transaction, the § 7203 or § 7206 charge may be directly referred to the United States Attorney. To the extent, however, the filing is "wholly fictitious" and has no relation to any underlying cash transaction, the case must be referred through the Tax Division.